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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

HUGO A. GONZALEZ,

Defendant and Appellant.

B212539

(Los Angeles County
Super. Ct. No. BA336027)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert J. Perry, Judge. Affirmed.

A. William Bartz, Jr., under appointment of the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Hugo A. Gonzalez appeals from the judgment entered following a jury trial in which he was convicted of six counts of second degree robbery, counts 1 through 5 and count 7 (Pen. Code, § 211) with the finding that in counts 1, 3, 4, and 7 he personally used a deadly weapon, a knife, within the meaning of Penal Code section 12022, subdivision (b)(1) and that in count 5 he personally used a deadly weapon, a screwdriver. After a court trial, he was found to have suffered a prior conviction for robbery, a serious felony within the meaning of Penal Code section 667, subdivision (a), and a serious or violent felony within the meaning of the “Three Strikes” law (Pen. Code, §§ 1170.12, subds. (a) through (d) and 667, subd. (b) through (i)) and was sentenced to prison for a total of 27 years and four months. The sentence consisted of in count 1, the upper term of five years, doubled to ten years by reason of his prior strike conviction, plus one year for the weapon enhancement. For the remaining counts, appellant was sentenced to one third the middle term, or one year, doubled to two years, plus four months each for the weapon enhancement in counts 3, 4, 5, and 7, plus five years for the prior serious felony enhancement.¹ The prosecution’s request for restitution was unopposed by the defense and the court ordered restitution in the amounts set forth in the prosecution’s sentencing memorandum.

PROCEDURAL BACKGROUND

On June 3, 2008, before trial, the “defense received additional discovery (3 CDs today)” and the defense motion to continue the matter was granted.

The minute order of June 23, 2008, reflects the “defense has served [seven] subpoenas on police department. People have [CD] and present to defense today.”

On July 3, and August 5, 2008, the motions by the defense to continue were granted.

¹ The court stated it believed the high term in count 1 was appropriate in that appellant was on probation at the time of the commission of the instant offenses and had proven to be a danger to society. The sentences were ordered to run consecutively in that the offenses involved separate acts, separate victims, and separate intents.

On August 18, 2008, appellant filed a motion pursuant to Penal Code section 995 to set aside the information with reference to counts 2, 3, 4, 6, and 7. The motion was denied.

At the commencement of trial, the defense advised the court that it had served on the police department seven subpoenas requesting radio transmission tapes and that the prosecution had responded that it intended to call the appropriate people to get the tapes to the defense. The court questioned the relevance of the radio transmissions and defense counsel responded he had not heard the radio transmissions and hoped after hearing the tapes he could say they had no relevance. Counsel observed there was a possibility of relevance regarding the descriptions given by the victim witnesses of the suspect, which the police communicated to the dispatcher or received from the dispatcher. The court questioned why counsel had not made a motion to compel the production if these tapes were so important. Defense counsel explained the prosecution had been in trial and had assured defense counsel that the informal discovery communications would be sufficient. The court responded that it sounded very speculative and that, if it was important, an effort could have been made to get the discovery before the first day of trial and therefore the court was not going to delay the start of trial. The prosecution responded that it had not been asked about the discovery until that day. Defense counsel had advised the prosecution ten minutes earlier and had said, "I subpoenaed these things and never got them."

EVIDENTIARY BACKGROUND

The evidence at trial established appellant committed six robberies, all within a few days and in the same geographic area. Three of the robberies were committed on the same day.

Count 4

On February 4, 2008, at approximately noon, appellant entered a mini-mart located on West Washington Avenue in Los Angeles and asked for a carton of cigarettes. He then pulled out a pocketknife with its blade extended, and demanded that the clerk open the cash register and give him the money. The clerk complied because she was

frightened and gave appellant approximately \$60. A video from the store's security system was played in court and the victim testified it accurately depicted the incident.

Count 1

On February 1, 2008, appellant entered a flower shop on Pico Boulevard in Los Angeles, pulled out a knife, and ordered the proprietor to open the cash register. Once she did, appellant took the money and fled. A video from the store's surveillance system depicting the incident was played in court.

Count 3

On February 4, 2008, at approximately 7:00 p.m., appellant entered a Winchell's Donut shop on West Venice Boulevard in Los Angeles and at knifepoint ordered an employee to open the cash register. When she did, appellant took the money and fled. The victim testified she was not sure appellant was the robber, because she had not seen his face. She had only looked at his hands and recalled they were tattooed. A video depicting the incident was played in court and still photographs taken from the video were displayed.

Count 2

On February 2, 2008, appellant entered a restaurant on West Pico Boulevard in Los Angeles, pushed an employee, and ordered her to open the cash register. She was afraid and when she complied, appellant grabbed the money and left.

Count 5

At approximately 11:40 p.m. on February 4, 2008, appellant entered a 7-Eleven Store on Venice Boulevard in Los Angeles, put a candy bar on the counter, and gave the clerk a dollar. When the clerk opened the cash register, appellant pulled "something out," grabbed money from the register, and fled. The victim at first thought appellant pulled out a knife but then realized it was "like a screwdriver." A surveillance video depicting the incident was played in court.

The clerk's boyfriend, Vashon Jackson, was sitting in his car outside of the store and saw appellant leave the store after committing the robbery. Jackson recorded appellant's license plate number and reported it to the police.

Count 7

On February 6, 2008, at approximately 8:00 a.m., appellant purchased gum at a store on West 18th Street in Los Angeles. After the proprietor put the money from the purchase into the cash register, appellant pointed a knife at her and demanded she open the cashier's drawer. The proprietor's husband came forward, opened the drawer, and gave appellant approximately \$200. He also gave appellant a carton of cigarettes. Videos depicting the incident were played in court.

Additional Evidence

On February 6, 2008, appellant's vehicle was located at a Best Western Inn on Adams Boulevard where appellant was arrested. During a search of his motel room, the police recovered clothing that matched the clothing worn by the suspect in some of the surveillance videos, and that matched the description of the suspect's clothing provided by some of the victims. The police also recovered a screwdriver and a carton of cigarettes from the room and a knife and a receipt from a Winchell's shop from appellant's vehicle.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On August 4, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On August 18, 2009, he filed a response claiming the trial court erroneously denied discovery of radio transmissions that defense counsel had subpoenaed two months before trial. Appellant claimed the transmissions could have assisted him in challenging the victims' identification of him as the robber.

We have examined the entire record and are satisfied that no arguable issues exist. Defense counsel failed to comply with the provisions of Penal Code section 1054.5, which provide the exclusive means of discovery. Further, even if there was a failure to disclose evidence, appellant has failed to establish there is a reasonable probability that

had the evidence been disclosed the result of the proceeding would have been different. (See *In re Williams* (1994) 7 Cal.4th 572, 611.) Appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.